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Before the
FEDERAL COMMUNICATIONS COMMISSION
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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.606(b),)
TV Table of Allotments,) MM Docket No. 01-148
TV Broadcast Stations and) RM-10141
Section 73.622(b), Table of Allotments,)
Digital Television Broadcast Stations)
(Campbellsville and Bardstown, Kentucky))

To: Marlene H. Dortch, Secretary
Office of the Secretary

APPLICATION FOR REVIEW

Louisville Communications, LLC ("Louisville Communications"), licensee of UHF television station WBKI-TV, NTSC Channel 34 and DTV Channel 19, both of Campbellsville, Kentucky, by its undersigned attorneys and pursuant to Section 1.115 of the Commission's rules, hereby applies for review of the Media Bureau's decision in the above-referenced proceeding. *See Report and Order*, DA 04-88, MM Docket No. 01-148, released July 9, 2004.^{1/} In the *Report and Order*, the Media Bureau's Video Division denied the Petition for Rule Making filed by Louisville Communications to (i) amend the Television Tables of Allotments, Sections 73.606(b) and 73.622(b) of the Commission's rules, to reallocate NTSC Channel 34 from Campbellsville to Bardstown, Kentucky, and paired DTV Channel 19 from Campbellsville to Bardstown; and (ii) modify the authorizations for WBKI-TV accordingly. The Video Division denied the reallocation request based on its view that the proposal would result in the removal of

^{1/} The text of the decision was published in the Federal Register on July 19, 2004; accordingly, this Application for Review is timely.

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the sole local television transmission service from Campbellsville, notwithstanding the fact that Campbellsville will retain local television transmission service from Class A television station W04BP, Campbellsville, Kentucky. Specifically, the Video Division held, “[T]he Commission has not established that Class A Television stations are local transmission services for purposes of the TV Allotment priorities and we thus are not able to consider Class A Station W04BP to be a local service for these purposes.” *Report and Order* at ¶ 7. Accordingly, pursuant to Section 1.115(b)(2)(ii) of the Commission’s rules, this Application for Review poses the novel question of whether a Class A television station may be considered a local television transmission service for purposes of the Commission’s television allotment priorities.

DISCUSSION

There is no question that Bardstown, a community of 10,374 people that is currently without local transmission service, is deserving of such service. Moreover, no loss of reception service is at issue in this proceeding since Louisville Communications did not propose to relocate the transmission facilities of WBKI-TV. The sole issue involved in this case is whether the change in WBKI-TV’s community of license from Campbellsville to Bardstown would deprive the former community of local television transmission service. As demonstrated herein, Campbellsville would not be deprived of local television service because W04BP provides the requisite level of television service to the Campbellsville community to be deemed a local television transmission service for purposes of the Commission’s TV allotment priorities. W04BP is licensed to Campbellsville University and currently provides a valuable local transmission service to the residents of Campbellsville. As a Class A primary station, W04BP is subject to the obligations of virtually all Part 73 regulations, including main studio, broadcast of

responsive programming, quarterly issues/programs lists, public file, political programming, children's programming and Emergency Alert System requirements.^{2/}

Moreover, in addition to its other programming of interest to the Campbellsville community, W04BP has a history of providing in excess of 12 hours weekly of local programming consisting of news and community affairs programs, including interview shows produced by students, talk shows, live-to-tape news of community events, and coverage of University and local high school sports events. As the record in this proceeding demonstrates, the University has broadcast such notable programming as *Your Community*, a half-hour talk show featuring guests addressing topics of local interest such as Campbellsville government affairs, civic organizations, health care, emergency services, and the educational system; *Campbellsville University Today*, a half-hour talk show profiling people and departments of the University, an institution with tremendous civic importance and a leading employer in the community; *What's Cooking*, a half-hour program featuring members of the local community sharing their recipes and cooking advice; and *The Coach Ron Finley Show*, a half-hour football coach's show featuring local football highlights.

As further testament to the station's value to the local community, W04BP is currently carried on the cable system serving Campbellsville and other communities throughout Taylor County. See Warren Communications News, *Television and Cable Factbook 2004*, Vol. 72, D-642. While the station currently is not required to be carried by the cable system, if WBKI-TV

^{2/} A few regulations that could not be applied to Class A stations for technical or other reasons are excepted. See *Establishment of a Class A Television Service*, 15 FCC Rcd 6355, ¶ 23 (2000) ("Class A R&O"), *Memorandum Opinion and Order on recon.*, 16 FCC Rcd 8244 (2001).

were permitted to change its community of license, W04BP would become a “qualified low power station” entitled to carriage. *See* 47 C.F.R. §§ 76.55(d), 76.56(b).

Accordingly, W04BP should be considered a local television transmission service to the Campbellsville community for purposes of the TV Allotment priorities.

Notwithstanding the fact that the Media Bureau concluded that the full Commission has not spoken to the issue, the Bureau stated that three characteristics of Class A television stations argue against considering such stations as local transmission services for purposes of the TV allotment priorities: (1) Class A television stations are not given full protection by all other stations; (2) they are limited to very low power; and (3) they have different main studio requirements from full power stations. *Report and Order* at ¶ 7. None of these characteristics, however, is material here. First, under the Commission’s rules, a Class A station such as W04BP is a primary service entitled to full interference protection and cannot be displaced by any full power station. *See* 47 C.F.R. §§ 73.613, 73.623(c)(5), 73.6010. The only caveat to this rule is that Class A stations must protect (1) the predicted Grade B contour of full-power analog television stations licensed or granted a construction permit as of the date of enactment of the Community Broadcasters Protection Act of 1999 (“CBPA”) (which established the Class A service), as such contour existed or was proposed at that time, as well as the facilities proposed in certain analog applications that were pending at that time; and (2) DTV stations that timely filed for maximization of their facilities. *Id.*, *Class A R&O* at ¶¶ 43-60 (2000). These priority rules are consistent with the Commission’s longstanding regulatory framework requiring new stations to protect existing facilities and subsequently filed applications to protect pending applications. The rules, however, do not in any way imply that Class A operation is somehow secondary to full power service. Furthermore, as demonstrated in the attached Engineering

Exhibit, in the event that W04BP were displaced by DTV operations, the station could move its operation to Channel 25 with an increased effective radiated power of 5 kilowatts from its currently licensed site. *See* Figure 1 to attached Engineering Statement. Operation by W04BP on Channel 25 would not be subject to displacement by any other station.

In addition, the fact that Class A stations operate at “low” power is no bar to treatment of W04BP as a primary service for allotment purposes. First, importantly, there is no dispute that W04BP provides the requisite coverage of Campbellsville, its community of license. Second, as a practical matter and as Louisville Communications has demonstrated, taking into consideration the area’s terrain, W04BP currently serves virtually all of Campbellsville as well as considerable surrounding areas with its over-the-air signal. *See* Exhibit A to Louisville Communications’ Reply to Comments of Independence Television Company, dated September 12, 2001. Third, W04BP is carried on the Campbellsville cable system, through which it obtains expanded coverage. Should WBKI-TV be permitted to change its community of license, W04BP would be *entitled* to carriage on the local Campbellsville cable system on which it already has a history of carriage. In any event, the loss of video reception service is not at issue in this case. Louisville Communications is not proposing in this proceeding to relocate either the analog or digital facilities of WBKI-TV. Accordingly, no viewer of the station will lose reception service from grant of this TV reallocation proposal. Thus, the power at which W04BP operates is immaterial. The only issue here is the whether the Commission should consider W04BP as a Campbellsville local television transmission service for purposes of its TV allotment priorities in this proceeding.

While these facts should be sufficient to demonstrate the lack of materiality of the power levels of Class A stations generally, and W04BP in particular, it would be unfair and improper to

exclude this Class A station from consideration as a local television transmission service in a TV allotment context when the Commission has treated limited service radio stations as local transmission services in radio allotment proceedings. As Louisville Communications pointed out to the Media Bureau, this case is similar to the situation in which a commercial radio station seeks to change its community of license where the only remaining station will be a daytime-only AM station or a noncommercial FM station (which Commission rules require to serve only 50% of the community with a 60 dBu, rather than a city grade, signal). In such circumstances, the Commission treats the remaining AM or noncommercial station as a local service regardless of its inability to replicate the service areas of the departing station. *See, e.g., Pauls Valley, Oklahoma*, 13 FCC Rcd 13458, ¶¶ 4, 7 (1998) (daytime-only AM would be sole remaining station), *Everglades City, Florida*, 15 FCC Rcd 9427, ¶¶ 2, 7 (2000) (NCE-FM would be sole remaining station).

Finally, it is difficult to comprehend how the fact that Class A stations are subject to *more stringent* main studio requirements than are full-power stations provides support for less favorable treatment of Class A stations. The main studio of a Class A station must be located within the station's Grade B contour. *See* 47 C.F.R. § 73.1125(c). However, the main studio of a full power station may be located 25 miles from its community of license or even farther so long as it is within the principal community contour of any station licensed to its community. What this means in this case is that WBKI-TV's main studio may be located well beyond 25 miles from the center of Campbellsville, while the W04BP main studio, which is already located within the corporate limits of Campbellsville, must be located well within that 25 mile radius. In short, the distinction which the Bureau has drawn actually strongly favors treating W04BP as a *local* television transmission service for Campbellsville.

The Commission's television allotment priorities are: (1) to provide at least one television service to all parts of the United States, (2) to provide each community with at least one television broadcast station, (3) to provide a choice of at least two television services to all parts of the United States, (4) to provide each community with at least two television broadcast stations, and (5) to assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. *Television Table of Assignments, Sixth Report and Order*, 41 FCC 148 (1952). Because grant of this reallocation request would result in the provision of a television broadcast station to an additional community without depriving Campbellsville of local television transmission service, grant of Louisville Communications' petition is consistent with allotment Priority 2, and thus will clearly serve the public interest.


CONCLUSION

For many years, Class A television station W04BP has served and continues to serve as a genuine local television transmission service for the residents of Campbellsville and the surrounding service area. Accordingly, W04BP should be considered a local television transmission service for TV allotment purposes. If the Commission were to accept W04BP as a local television transmission service in this context, it is clear that a grant of Louisville Communications' proposal will result in a preferential arrangement of allotments as it will permit WBKI-TV to provide a first local transmission service to Bardstown, a sizeable community currently without such service, without depriving Campbellsville of local television transmission service or any listeners of existing reception service. For these reasons, Louisville

Communications respectfully requests that the Commission review and reverse the Media Bureau's decision and grant its TV reallocation petition.

Respectfully submitted,

LOUISVILLE COMMUNICATIONS, LLC

By: 
Richard R. Zaragoza
Veronica D. McLaughlin Tippet

Its Attorneys

SHAW PITTMAN LLP
2300 N Street, NW
Washington, DC 20037-1128
(202) 663-8000

Dated: August 18, 2004

**ENGINEERING STATEMENT
IN SUPPORT OF A REQUEST FOR REVIEW
OF MEDIA BUREAU'S DECISION
RE AMENDMENT OF SECTIONS 73.606(B) AND 73.622(B)
OF THE COMMISSION'S RULES
CAMPBELLSVILLE AND BARDSTOWN, KENTUCKY**

AUGUST 2004

This engineering statement has been prepared on behalf of Louisville Communications, LLC (“Louisville Communications”), licensee of UHF television station WBKI-TV, Campbellsville, Kentucky in support of a review of the Media Bureau’s decision with respect to the amendment of Section 73.606(b) Table of Allotments and Section 73.622(b) DTV Table of Allotments.

At present WBKI-TV operates on UHF TV Channel 34 (590-596 MHz) with 5000 kW effective radiated power (ERP) and 387 meters antenna height above average terrain (HAAT). Louisville Communications also holds a construction permit to operate on DTV Channel 19 with 1000 kW ERP and 370 meters HAAT.

Louisville Communications had filed a petition to reallocate analog TV Channel 34 and paired DTV Channel 19 from Campbellsville to Bardstown, Kentucky, which was denied by the Media Bureau.

At present Class A low power TV station W04BP is also licensed to Campbellsville, Kentucky. W04BP operates on VHF Channel 4 with 0.07 kW ERP and 328 meters antenna radiation center above mean sea level.

Louisville Communications has conducted engineering studies to determine the availability of other alternate TV channels in the event W04BP is to change its operating frequency due to DTV operations. It has been determined that W04BP can operate on UHF TV Channel 25 from its current licensed site. Further engineering studies based on the FCC OET Bulletin 69 indicate it is also possible to operate with 5 kW ERP on Channel 25. The attached map (Figure 1) shows the predicted Grade B (64 dBu) contour for operation on Channel 25 with 5 kW and 328 meters antenna radiation center above mean sea level. Figure 1 also shows the predicted Grade B (47 dBu) contour for the

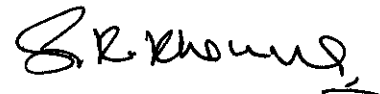
present operation of W04BP on Channel 4. It is clear from Figure 1 that W04BP can provide TV service to a larger area on Channel 25 than on its current operation on Channel 4.

If Channel 25 was substituted for Channel 4 and is authorized by the Commission, it is very unlikely that the W04BP's use of Channel 25 would ever be subject to displacement because this Class A operation would be protected from interference by other analog TV, DTV, Class A LPTV and TV translator stations.

All TV contours have been computed according Section 73.684 of the Commission's rules and are based on computerized 3-second terrain database.

Under penalty of perjury the undersigned states that the foregoing statement has been prepared by him and that the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.

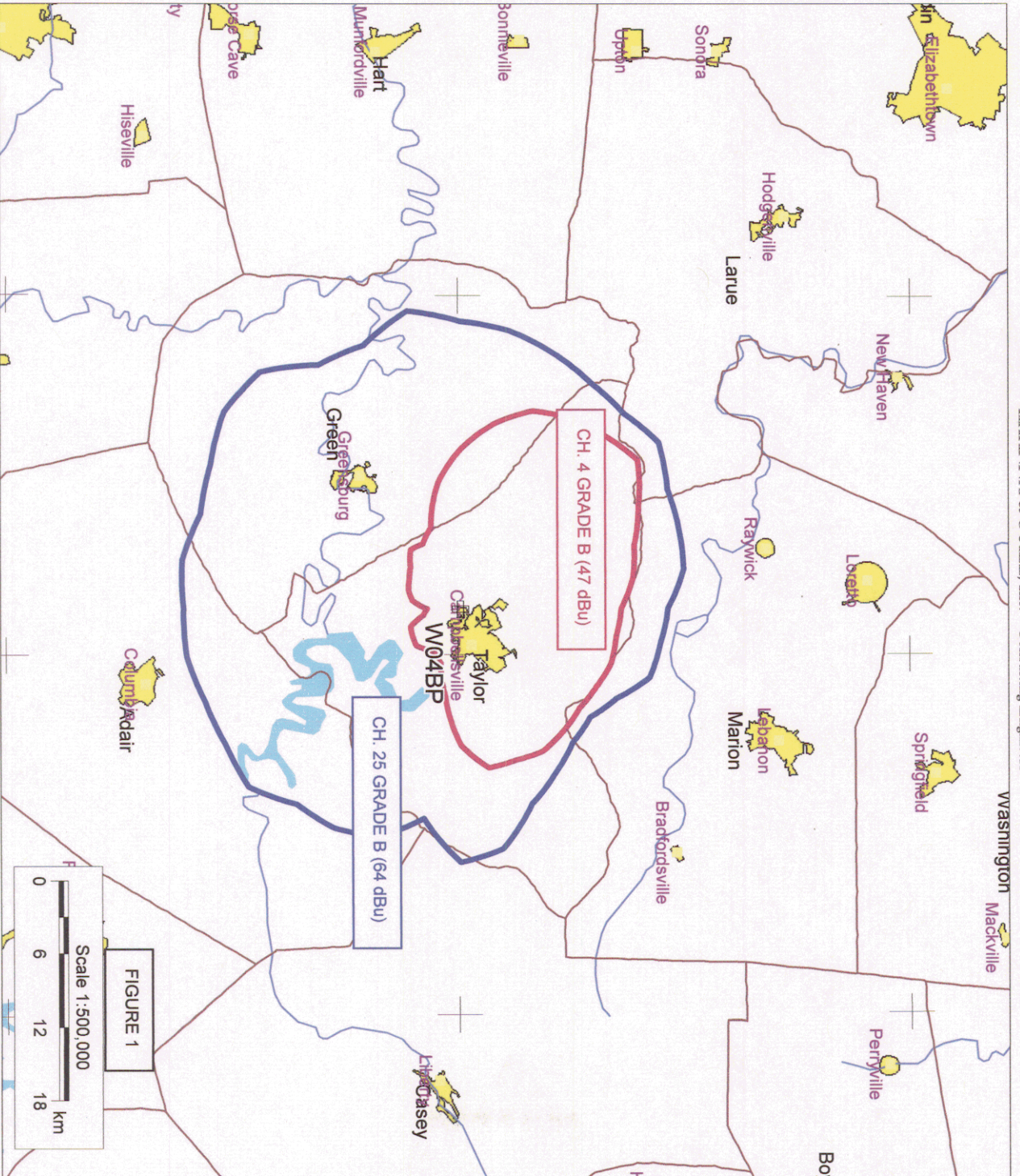
16 August 2004



S. K. Khanna
Professional Engineer
District of Columbia, PE License No.8057

W04BP
 BL TVL198605131F
 Latitude: 37-20-07 N
 Longitude: 085-22-33 W
 ERP: 0.07 kW
 EIRP: 0.1148 kW
 Channel: 04-
 Frequency: 68.5 MHz
 AMSL Height: 328.0 m
 Elevation: 244.0 m
 Horiz. Pattern: Directional
 Vert. Pattern: Yes
 Elec Tilt: 0.0
 Prop Model: None

W04BP
 Latitude: 37-20-07 N
 Longitude: 085-22-33 W
 ERP: 5.00 kW
 EIRP: 8.20 kW
 Channel: 25
 Frequency: 539.0 MHz
 AMSL Height: 328.0 m
 Elevation: 244.0 m
 Horiz. Pattern: Omni
 Vert. Pattern: No
 Prop Model: None




CERTIFICATE OF SERVICE

I, Renee Williams, do hereby certify that on this 18th day of August 2004, I mailed by first-class United States mail, postage prepaid, copies of the foregoing "APPLICATION FOR REVIEW" to the following:

Barbara Kreisman, Esq. *
Chief, Video Division
Media Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

Victoria M. McCauley*
Video Division
Media Bureau
Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

John R. Feore, Jr., Esq.
Kevin P. Latek, Esq.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Avenue, N.W.
Suite 800
Washington, D.C. 20036



Renee Williams

*via hand delivery